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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES WHITTENBERG,

Plaintiff - Appellant,

v.

LIEUTENANT L. ROLL,

Defendant - Appellee.

No. 07-16985

D.C. No. CV-04-02313-FCD/JFM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

James Whittenberg, a California state prisoner, appeals pro se from the district court's summary judgment for defendant Roll in his 42 U.S.C. § 1983 action alleging that Roll retaliated and discriminated against him by reclassifying

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his prison job from a paid to an unpaid position. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002), and we affirm.

The district court properly granted summary judgment because Whittenberg failed to raise a genuine issue of material fact as to whether Roll took an adverse retaliatory action against him, *see Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (holding that a prisoner alleging retaliation must show, *inter alia*, that a state actor took adverse action against him because of the prisoner's protected conduct), or had discriminatory intent, *see Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 754 (9th Cir. 2001) ("To avoid summary judgment [on an Equal Protection claim, a plaintiff] must produce evidence sufficient to permit a reasonable trier of fact to find by a preponderance of the evidence that the decision was racially motivated.").

The district court did not abuse its discretion in denying Whittenberg's motions for appointment of counsel. *See Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990) (finding no abuse of discretion where the "exceptional circumstances" warranting appointment of counsel were not present).

Whittenberg's remaining contentions are unpersuasive.

AFFIRMED.